

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARTIN JOHN GONZALES,

Petitioner,

vs.

No. 16cv00550 KG/SCY

JOHN SANCHEZ, WARDEN,

Respondent.

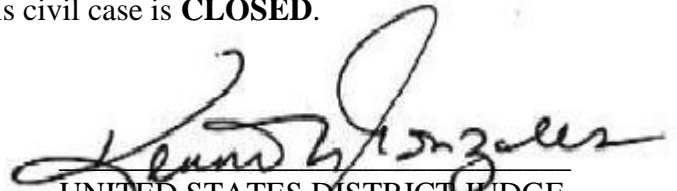
ORDER OF DISMISSAL

THIS MATTER is before the Court under rule 4 of the Rules Governing Section 2254 Cases on the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Martin John Gonzales on June 9, 2016 (Doc. 1). On June 15, 2016, the Court entered an Order to Show Cause, ordering that Petitioner Martin John Gonzales show cause why this case should not be dismissed for lack of jurisdiction. (Doc. 3). Gonzales has filed a timely response to the Order to Show Cause. (Doc. 4). The response confirms that Gonzales is not in state custody and the Court will dismiss this *habeas corpus* proceeding for lack of jurisdiction. *Tuck v. United Services Auto. Ass'n*, 859 F.2d 842, 844 (10th Cir. 1988); *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974).

In his response, Gonzales states that “[t]he 12th district court ordered my release at the 4/21/16 hearing so I was released on 4/29-2016.” (Doc. 4). Gonzales is not currently in custody and was not in custody at the time he filed his Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. As set out in the Court’s show cause order, under 28 U.S.C. § 2254, this Court may entertain an application for a writ of habeas corpus only “in behalf of a person *in custody* pursuant to the judgment of a State Court.” 28 U.S.C. § 2254(a)

(emphasis added). The custody requirement is jurisdictional and the Court must dismiss if it determines it lacks jurisdiction. *Mays v. Dinwiddie*, 580 F.3d 1136, 1138-1139 (10th Cir. 2009).

IT IS ORDERED that the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Martin John Gonzales (Doc. 1) is **DISMISSED** without prejudice for lack of jurisdiction and this civil case is **CLOSED**.



UNITED STATES DISTRICT JUDGE